

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **06-4294**

HARRY L. BIERLEY

VS.

WARDEN JAMES VESCHECCO, ET AL.

(W.D. Pa. Civ. No. 04-cv-00363)

Present: SLOVITER, CHAGARES AND GREENBERG, CIRCUIT JUDGES

Submitted is appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

MMW/CJG/clw

O R D E R

The foregoing request for a certificate of appealability is denied, as jurists of reason could not debate that the District Court properly dismissed appellant's 28 U.S.C. § 2254 habeas petition. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (citing 28 U.S.C. § 2253(c)). Even assuming arguendo that appellant's petition survives a mootness determination, see Spencer v. Kemna, 523 U.S. 1, 8-9 (1998), his § 2254 petition nonetheless fails to assert any claim that is cognizable in a federal habeas proceeding which has been properly exhausted before the state courts, and which is not now procedurally defaulted. See Duncan v. Henry, 513 U.S. 364 (1995) (issue must be fairly presented to state court as a federal claim). See also Coleman v. Thompson, 501 U.S. 722, 750 (1991); Murray v. Carrier, 477 U.S. 478, 488 (1986).

By the Court,

/s/ Morton I. Greenberg
Circuit Judge

Dated: June 6, 2007

CLW/cc: Mr. Harry L. Bierley
Roger M. Bauer, Esq.